

**Minutes of the December 20, 2019  
Special Meeting of the Yancey County Board of Commissioners  
Held at 11:00 am in the Commissioners Board Room  
Yancey County Courthouse, Burnsville, North Carolina**

Present at the meeting held December 20, 2019 were Chairman Jeff Whitson, Commissioner Mark Ledford, Commissioner Jill Austin, Commissioner David Grindstaff, Commissioner Johnny Riddle, County Manager Lynn Austin, Planning and Economic Development Director Jamie McMahan, County Attorney Donny Laws, Tax Assessor/Administrator Danny McIntosh, Clerk to the Board Sonya Morgan, members of the media, and members of the general public.

**Call to Order**

Chairman Whitson called the meeting to order.

**Nomination and Election of Chairman**

Chairman Whitson recognized County Attorney Donny Laws to oversee the election of the Chairman of the Yancey County Board of Commissioners for the ensuing year. Mr. Laws then asked the Board for nominations for the Chairman. Commissioner Ledford nominated current Chairman, Commissioner Whitson. Commissioner Austin nominated Commissioner Riddle. Mr. Laws presented Commissioner Whitson for Chairman, with Commissioners Ledford, Whitson, and Grindstaff voting "for" and Commissioners Austin and Riddle voting "against." By majority vote, Commissioner Whitson was elected Chairman of the Board of Commissioners for the ensuing year.

**Approval of the Agenda**

Commissioner Riddle made a motion to approve the agenda, with Commissioner Ledford providing a second. By unanimous vote the agenda was approved. (Attachment A)

**Public Hearing**

Chairman Whitson entertained a motion to open the floor for the purpose of holding a public hearing to receive comments on the appropriation of county funds for the economic development project, Little Leaf Farms, Inc. Commissioner Riddle made the motion with Commissioner Grindstaff seconding the motion. By unanimous vote the Board opened the floor for the purpose of holding a public hearing. Chairman Whitson then recognized Planning and Economic Development Director Jamie McMahan to discuss the project. Mr. McMahan stated that county staff had worked many months in recruiting Little Leaf Farms, Inc. to locate their business to Yancey County. Mr. McMahan summarized the recruitment process for those present. The company conducted a site visit last December and expressed interest in the former OMC facility. It was disclosed that the company wanted to invest \$86 million in a hydroponic green house facility, a model of innovation using green technology for large manufacturing. Mr. McMahan indicated the next step was to consider the environmental and geotechnical concerns. The former OMC facility had contamination, but the Department of Environment Quality indicated that it was not a concern if the current pad remains in place. Mr. McMahan indicated that the plan would be to enroll the property as a Brownfield site, with the site development plan to leave the current pad in tact. In order to recruit the company it became evident that due to size of facility that grading and site preparation was necessary. Currently, a 19-acre pad exists and the company needs a larger size. The company management expressed a desire to have the property provided as opposed to tax incentive plan. Mr. McMahan indicated that the cost of purchasing the property and site development in preparation for construction is \$5 million.

Mr. McMahan indicated that each job adds approximately \$10,000 to the economy over a 10-year period. Mr. McMahan said that the Department of Commerce looks at indirect business impact, taxes, and sales tax, which yield \$1.4 million, for a total of \$6.9 million economic impact over a ten period.

Mr. McMahan said the entire site is 62 acres and the county would acquire the entire tract after the site was developed to satisfaction of the company. Approximately 40 acres will be

conveyed to Little Leaf Farms. The proposal is to tentatively approve \$5 million, with a \$436,000 debt service payment. Mr. McMahan indicated that the debt service would be paid with ad valorem tax collected, with \$79,000 coming back into treasury once the project is built out. When the loan is retired the county will be collecting \$516,000 in taxes per year. Mr. McMahan summarized the contingencies included in the agreement with the company and indicated that the agreement has been drafted but will not be executed until a formal offer is made. He also indicated the company has been awarded a JDIG grant of \$1.4 million, which is the first JDIG to Yancey County. The state has award \$151,000 grant for infrastructure and a \$175,000 grant for training through community college system for training at Mayland Community College. Chairman Whitson thanked Mr. McMahan for the presentation and recognized his recruitment efforts and the work on the proposed incentive. He further acknowledged Mr. McMahan for working tirelessly on the project and acknowledged County Manager Austin for her work on the project as well. Additionally, Chairman Whitson thanked County Attorney Laws and every commissioner and stated that this was great for Yancey County. Commissioner Ledford echoed the sentiments.

Danny McIntosh said that this was the biggest thing to hit in generations and that it would be a good fit. He indicated that he was thrilled to see someone come that is environmentally conscious. Mr. McIntosh expressed concern regarding the community water supply and the infrastructure. Chairman Whitson reiterated that the company is extremely environmentally conscious, has considered sustainable rainfall and the natural resources to be sure the business will be supported. Mr. McMahan said that meteorology is factor and the company does not loose any precipitation; the company collects rainwater and snow using sophisticated technology. Mr. McMahan reported that the company burns off the natural gas emissions, does not use any chemical pest control, controls pest through biological processes, and is environmentally friendly. He indicated the company would connect to the existing water line to provide water for restrooms and general use, but not for us in the operation.

Claire D'Gaia next addressed the Board and stated she has grown food for 40 years. She expressed concern regarding the collection of water and wanted to know if the company would use city water. Mr. McMahan indicated that the external basins would be collecting water while the facility is under construction in preparation for production. Mr. McMahan indicated that the jobs would come in the year 2021. Commissioner Riddle asked Mr. McMahan to reaffirm that the business would be receiving \$151,000 for infrastructure, which Mr. McMahan affirmed. Commissioner Grindstaff stated that the county has been dealing with this project for a year and felt like it had been thoroughly researched. Commissioner Grindstaff said he understood that there was a minimum requirement of 100 jobs. Mr. McMahan indicated that that was the minimum commitment and that the business may grow over time. He further indicated that the elevation allowed for a 12-month growing season and that it takes 23 days to grow crop. He also stated that the transportation model from Yancey County to major metropolitan areas is favorable as it is not more than 12 hours away from all of them. Chairman Whitson asked if there were any other comments. Hearing none, Commissioner Riddle made a motion to close the public hearing. Commissioner Austin seconded the motion. The Board voted unanimously to close the public hearing.

Mr. McMahan indicated that in order to move forward, the Board would need to entertain motions to acquire the property per the terms of the option agreement and to approve the economic incentive grant package. Commissioner Grindstaff made the motion to acquire the property per the terms of the option agreement and Commissioner Ledford seconded. By unanimous vote the Board voted to acquire the property per the terms of the option agreement. Commissioner Austin made a motion to approve the economic incentive grant package with Commissioner Riddle seconding the motion. By unanimous vote the incentive was approved.

#### **Nomination and Election of Vice Chairman**

Next, Chairman Whitson revisited Item III on the agenda for the purpose of electing a Vice Chairman of the Yancey County Board of Commissioners for the ensuing year. Chairman Whitson nominated Commissioner Ledford. No other nominations were made. The Board voted unanimously to elect Commissioner Ledford as the Vice Chairman.

### **Building Reuse Grant for Altec**

Chairman Whitson then recognized Mr. McMahan to discuss another economic development project, the building reuse grant for Altec. The agreement considered would allow the county to administer and draw down funds for the improvements to be made at Altec's second location at the Ferguson Hill Road facility (formerly the "sock plant"). Altec has committed adding 50 additional jobs. Mr. McMahan indicated that the grant has been approved. He further indicated that Altec would be shut down for the holidays, would be bring in equipment into the new location during that period, and will begin manufacturing on January 3. Mr. McMahan gave a brief explanation of the grant process. County Attorney Laws indicated that the terms of the agreement were substantive and appropriate and would recommend execution as requested. He also indicated that there were extensive provisions that require monitoring and obligations that company has to fulfill. Mr. Laws indicated that the county must monitor and make sure goals are met and the Economic Development Director and County Manager would do the monitoring. Mr. McMahan indicated as practical matter, monitoring would be done quarterly.

Chairman Whitson asked for a motion to approve the building reuse grant agreement for Altec. (Attachment B) Commissioner Riddle made the motion with Commissioner Ledford seconding. By unanimous vote the grant was approved.

### **Adjournment**

Having no further business, Commissioner Riddle made a motion to adjourn, with Commissioner Ledford seconding the motion. The Board of Commissioners voted unanimously to adjourn.

Approved and authenticated this the 13<sup>th</sup> day of January 2020.

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Jeff Whitson, Chairman

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Mark Ledford, Vice Chairman

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Sonya Morgan, Clerk to the Board



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Jill Austin, Commissioner

\_\_\_\_\_  
David Grindstaff, Commissioner

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Johnny Riddle, Commissioner



**AGENDA**  
**YANCEY COUNTY BOARD OF COMMISSIONERS**  
**SPECIAL MEETING**  
**December 20, 2019**  
**11:00 AM**

- I. Call to Order**
- II. Approval of the Agenda**
- III. Election of Chairman and Vice Chairman**
- IV. Public Hearing – Appropriation of County Funds for Economic Development  
Project Little Leaf Farms, Inc.**
- V. Building Reuse Grant for Altec**
- VI. Adjourn**



ROY COOPER  
Governor

ANTHONY M. COPELAND  
Secretary

KENNY FLOWERS  
Assistant Secretary

December 9, 2019

Mr. Jeff Whitson  
Chairman  
Yancey County  
110 Town Square Road  
Burnsville, NC 28714

Re: Contract Agreement for Grant Number 2020-008-3201-2587; Your Signature and Reply is Requested  
Project Title: "Altec Industries/Project Lamp Post"

Dear Chairman Whitson:

Enclosed for your review and signature is a complete set of contract documents required to finalize the grant award from the North Carolina Rural Infrastructure Authority. Below is a description of the documents enclosed along with an explanation of the signatures required for each document.

Document:	Document Description:	Signed By:
Grant Agreement	Contract: Outlines the terms of Grant Agreement between the Department of Commerce and the Unit of Local Government.	Highest Elected Official - Unit of Local Government
Exhibit A	Scope of Services: Outlines the scope of the renovation/construction project.	No Signature Required
Exhibit B	Payment Schedule: Outlines the process for the Unit of Local Government to request reimbursements from Department of Commerce.	No Signature Required
Exhibit C	Reporting Schedule: Outlines the schedule of reports that are due from the Unit of Local Government to the Department of Commerce and when they are due.	No Signature Required
Exhibit D	Closeout/Job Requirements: Outlines the process for the Unit of Local Government to report the creation and maintenance of jobs to the Department of Commerce.	No Signature Required
Exhibit E	Legally Binding Commitment (LBC): Outlines terms and conditions of the Loan.	Highest Elected Official - Unit of Local Government and Legal Property Owner listed on the Deed.
Exhibit F	Promissory Note: Defines the repayment terms of the Loan in the event of default.	Legal Property Owner listed on the Deed.
Exhibit G	Limited Waiver of Confidentiality: Contains employment information reported to the Department of Commerce's Division of Employment Security.	Each Business involved in the project.
Exhibit H	Deed of Trust Documentation	Highest Elected Official - Unit of Local Government

Execute these documents, scan a quality copy and return to my attention at [rgpreports@nccommerce.com](mailto:rgpreports@nccommerce.com). If you have any questions or if I can be of any assistance, please contact me at (919) 814-4671 or [nichole.gross@nccommerce.com](mailto:nichole.gross@nccommerce.com).

Sincerely,

Nichole M. Gross  
Grant Manager

Enclosure

The North Carolina Department of Commerce ("Commerce"), an agency of the State of North Carolina ("State"), enters into this Rural Economic Development Grant Agreement ("Grant Agreement") with **Yancey County** (the "Governmental Unit" and, together with Commerce, the "Parties").

WHEREAS, the North Carolina General Assembly ("General Assembly") has determined that it is the policy of the State to stimulate economic activity and to create new jobs for citizens of the State by providing matching grants or loans to specific local governmental units so as to productively reuse certain buildings and properties or expand rural health care facilities subject to the requirements of N.C.G.S. §§143B-472.127 and .128; and

WHEREAS, under N.C.G.S. §143B-472.128, the General Assembly created the North Carolina Rural Infrastructure Authority ("Rural Authority") to review applications for and, where appropriate, authorize such matching grants or loans, and, under N.C.G.S. §§143B-472.126 and .127, the General Assembly authorized Commerce to administer such grants or loans; and

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, and based on the terms, conditions and representations in this Grant Agreement's Exhibits A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (LBC), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality ("Waiver")), the Rural Authority has approved a grant (the "Grant") to the Governmental Unit; and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated by reference herein; (2) based on the representation in the application that **The Winter Star Company, Inc** (the "Owner") owns certain real property located at:

54 Ferguson Hill Road  
Burnsville, NC 28714

in **Yancey County**, North Carolina (the "Property"); (3) based on Commerce's Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to this Grant Agreement by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the "Project," as summarized in Exhibit A to this Grant Agreement).

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as set out herein, the Parties mutually agree to the following terms and conditions:



1. Scope of Program/Agreements to be Executed.

- (a). As conditions of the Grant Agreement:
  - i. The highest elected official of the Governmental Unit shall execute two originals of this Grant Agreement in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one of them to Commerce;
  - ii. The Governmental Unit shall ensure that its highest elected official and a duly authorized representative of the Owner execute two originals of the Rural Economic Development Loan Agreement and Legally Binding Commitment ("LBC") in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one such original to Commerce with the one executed original of the Grant Agreement;
  - iii. The Governmental Unit shall ensure with the Owner that every individual or entity that has any ownership interest in the real property which is the subject of the Project executes two originals of the Promissory Note attached as Exhibit F in its exact form and shall return one such original to Commerce with the one executed originals of the Grant Agreement; and
  - iv. Exhibit A refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs ("New Jobs") to complete the Project as the "Company," the "Employer" and the "Business" (together and hereinafter, the "Business"). The Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver of Confidentiality ("Waiver"), attached as Exhibit G, and shall return the original of any such Waiver to Commerce with the executed originals of the Grant Agreement. The Governmental Unit shall also ensure that any additional Business which becomes involved in the Project after the Grant Agreement is finalized executes a Waiver upon its involvement, the original of which the Governmental Unit shall promptly forward to Commerce.
- (b). The Governmental Unit shall provide Commerce with any information obtained pursuant to the LBC and allow Commerce to execute any rights of the Governmental Unit under the LBC, including the Governmental Unit's rights of access, review or monitoring and Commerce's rights as a third-party beneficiary thereunder.
- (c). The Governmental Unit shall exercise all of its rights and duties under the LBC in a prudent and timely manner to ensure the use of the Grant funds for the intended purposes and objectives and to preserve the rights of Commerce in this Grant Agreement and the LBC.
- (d). The LBC specifies how many New Jobs the Business must create and maintain in the performance of the Project and, if the Business fails to do so, those Grant funds that the Owner must repay to the Governmental Unit for return to Commerce or else repay directly to Commerce, upon request and as directed. If such New Jobs are not created or maintained, then the Governmental Unit shall return to Commerce any Grant funds it has not already disbursed to the Owner, make a timely demand for repayment from the Owner and, if such repayment is not forthcoming, initiate and fully litigate legal proceedings against the Owner to recover such repayment.

- (e). Without limitation, failure by the Governmental Unit to timely demand repayment from and, if necessary, initiate and fully litigate such legal proceedings against the Owner may affect the future consideration of the Governmental Unit for grant programs administered by Commerce. Further, and without limitation, if the Governmental Unit fails to timely initiate legal proceedings against the Owner for such repayment and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all litigation costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.
2. Changes in the Project or Other Conditions.
- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC ("Loan"), the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Governmental Unit, the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.  
Notwithstanding the foregoing and wherever referred to in this Grant Agreement, "cessation of business," "ceasing to do business" and "ceases to do business" shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) seasonal shutdowns of operations as long as such cessation do not exceed a total of four (4) weeks in any calendar year (excluding time attributable to an event of force majeure as described below) and (3) under the circumstances of for the period of time described in Paragraph 17 below.
  - (b). Additionally, the Governmental Unit shall immediately notify Commerce of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Grant Agreement, the LBC or the Project. In its sole and unreviewable discretion, Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.
3. Term of Grant Agreement. The effective period of this Grant Agreement shall commence on **8/22/2019** ("Effective Date") and shall terminate on **8/22/2021** unless terminated on an earlier date under the terms of this Grant Agreement (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.
4. Funding. The Rural Authority grants to the Governmental Unit an amount not to exceed **\$500,000.00** for expenditures directly relating to the Project. The Governmental Unit hereby represents and warrants that all Grant funds shall be utilized exclusively for the purpose of the Project and consistent with all applicable laws, rules, regulations and requirements, and that the Governmental Unit shall not make or approve of any improper expenditure of Grant funds (including Loan funds). Administrative expenses of the



Governmental Unit are not eligible for Grant funding and any such use of Grant funds will violate this Grant Agreement.

5. Independent Status of the Governmental Unit.
  - (a). The Governmental Unit is an entity independent from the Rural Authority and Commerce. The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between or among Commerce, the Rural Authority, the Governmental Unit or any third party (including, without limitation, the Owner or any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make the Governmental Unit (including its employees, agents, members or officials) or any third party (including, without limitation, the Owner or any Business) employees, agents, members or officials of Commerce or the Rural Authority. Neither the Governmental Unit nor any third party (including, without limitation, the Owner or any Business) shall have the ability to bind Commerce or the Rural Authority to any agreement for payment of goods or services or represent to any person that they have such ability.
  - (b). The Governmental Unit shall be responsible for payment of all of its expenses, including rent, office expenses and all forms of compensation to employees. The Governmental Unit shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Grant Agreement. All expenses incurred by the Governmental Unit are its sole responsibility, and neither Commerce nor the Rural Authority shall be liable for the payment of any obligations incurred in the performance of the Project.
6. Method of Payment. Commerce shall pay the Grant funds to the Governmental Unit in accordance with the Payment Schedule attached hereto as Exhibit B after receipt of written requests for payment from the Governmental Unit certifying that the conditions for such payment under this Grant Agreement have been met and that the Governmental Unit is entitled to receive the amount so requested and any other documentation that may be required by Commerce.
7. Obligation of Funds. The Governmental Unit shall not obligate Grant funds prior to the Effective Date or subsequent to the Termination Date of this Grant Agreement. All obligations outstanding as of the Termination Date shall be liquidated within thirty days.
8. Project Records.
  - (a). The Governmental Unit shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this Grant Agreement separate from accounts for other awards, monetary contributions or other revenue sources for this Project.

- (b). The Governmental Unit shall retain all financial records, supporting documents and all other pertinent records related to the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all Project records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

9. Monitoring, Reports and Auditing.

- (a). The Governmental Unit agrees to ensure compliance and provide its assistance with such monitoring and auditing requirements as the State may request, including following the Termination Date of this Grant Agreement. Additionally, the Governmental Unit shall regularly monitor all performance under Grant-supported activities, including activities performed by the Owner and any Business, to ensure that time schedules are being met, New Jobs are being created and maintained and other performance goals are being achieved.
- (b). The Governmental Unit shall furnish Commerce detailed written progress reports according to the time periods specified in Exhibit C or as otherwise requested by Commerce. Such reports should describe the progress made by the Governmental Unit, the Owner and any Business toward achieving the purpose(s) of the Project, including specifically the goals of New Job creation and maintenance. Such descriptions should include the successes and problems encountered during the reporting period. Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until Commerce is in receipt of the delinquent report and the report meets with Commerce's approval, in Commerce's sole discretion.
- (c). The Governmental Unit acknowledges and agrees that, with regard to the Grant funds, it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act - Annual Independent Audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of Grant funding received by the Governmental Unit and are subject to change from time to time.
- (d). Within thirty (30) days after the Termination Date, the Governmental Unit shall submit a final report to Commerce describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project period. In the final report, the Governmental Unit should describe the Project, how it was implemented, to what degree the established Project objectives were met and the difficulties encountered, what the Project changed and its cost.
- (e). The Governmental Unit grants the State and any of its related agencies, commissions or departments (including, without limitation, Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating to the Grant Agreement, the LBC or the Project. Likewise, the Governmental Unit

shall ensure that the Owner and any Business provide the same access. In addition, the Governmental Unit agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

10. Termination; Availability of Funds.

- (a). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under this Agreement, if the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, Commerce shall have no responsibility to make additional Grant payments. Upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.
- (b). The obligations of the Rural Authority and/or Commerce to pay any amounts under this Grant Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant (and therefore the Loan) become unavailable, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving written notice specifying the Termination Date, which Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.

11. Liabilities and Loss. The Governmental Unit hereby agrees to release, indemnify and hold harmless the State (including, without limitation, the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of third parties (including, without limitation, the Owner and the Business) arising out of any act or omission of the Governmental Unit or any third party (including, without limitation, the Owner and the Business) in connection with the performance of this Grant Agreement, the LBC or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Governmental Unit hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in

connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Governmental Unit or of any third party (including, without limitation, the Owner and the Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

12. Governmental Unit Representations and Warranties. The Governmental Unit hereby represents and warrants that:
- (a). The execution and delivery of this Grant Agreement have been duly authorized by all necessary Governmental Unit action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Governmental Unit is a party or by which it is bound.
  - (b). There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Governmental Unit, threatened against or affecting it, the Owner or the Business, that could or might adversely affect the Project or any of the transactions contemplated by this Grant Agreement or the validity or enforceability of this Grant Agreement or the abilities of the Governmental Unit or the Owner to discharge their obligations under this Grant Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the Governmental Unit shall be liable to Commerce for repayment of the entire amount of the Grant and this Grant Agreement may be terminated by Commerce effective upon notice.
  - (c). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Grant Agreement by the Governmental Unit or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Governmental Unit shall provide Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Grant Agreement.
  - (d). The Governmental Unit is solvent.
  - (e). A cash match grant, loan or other funding ("Cash Match") equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. All Cash Match funds shall be utilized exclusively for the purpose of the Project, and there shall be no improper expenditures of Cash Match funds. All Cash Match funds shall be expended prior to or simultaneously with and at the same rate as the Owner's expenditure of Loan funds.

- (f). Upon the Governmental Unit's reasonable inquiry of and receipt of supporting evidence from the Owner, both the Owner and any Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.
13. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.
- (a). Under the LBC, the Owner agrees at all times to preserve its legal existence, except that it may merge or consolidate with or into, or sell all or substantially all of its assets to, any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in the LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees in the LBC to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under the LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under the LBC.
- (b). Other than as provided for in Paragraph 13(a) above, if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall be the sole responsibility of the Governmental Unit to (i) immediately notify Commerce and (ii) pursue any claim for Grant funds owed the State by the Owner or Business, including in any legal proceeding, to obtain the maximum payment allowed by law. To the extent the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and obtain the maximum payment allowed by law, and without limitation, the Governmental Unit shall be liable to Commerce for all amounts that should have been awarded to the Unit in the proceeding if it had taken the necessary action (notwithstanding whether such amounts would have actually been paid by the Owner or Business). Alternatively, without limitation, if the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all legal costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.
- (c). If the Governmental Unit fails to provide Commerce notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this Grant Agreement. If there is such a cessation or such a proceeding, Commerce may terminate the Grant Agreement upon written notice to the Governmental Unit. If there is such a cessation or such a proceeding, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, the Governmental Unit, the Owner and any Business shall not expend any Grant or Loan

funds without Commerce's express written authorization and shall return all unspent Grant or Loan funds to Commerce upon demand and if permissible under applicable bankruptcy, dissolution or insolvency law.

14. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 14 are in addition to those repayment requirements and other remedies set forth elsewhere in this Grant Agreement, including the requirements to repay unspent Grant funds. No remedy conferred or reserved by or to the State is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Grant Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). If there is a breach of any of the requirements, covenants or agreements in this Grant Agreement or the LBC, or if there are any representations or warranties which are untrue as to a material fact in this Grant Agreement, the LBC or in relation to the LBC or the Project (including the performance thereof), the Governmental Unit agrees that Commerce has the sole discretion to require repayment from the Governmental Unit of an amount of Grant funds to be determined in Commerce's sole discretion but not to exceed the amount of Grant funds the Governmental Unit has already received under this Grant Agreement. Such requirements, covenants or agreements include but are not limited to Paragraphs 1, 2(a), 4, 10(a), 12 and 13 of this Grant Agreement and include but are not limited to the creation and retention of the New Jobs and the retention of the Baseline Number of jobs under the LBC.

15. No Waiver by the State. Failure of the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this Grant Agreement or the LBC shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State of any condition or the breach of any term, provision or representation contained in this Grant Agreement or the LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
16. Waiver of Objections to Timeliness of Legal Action. The Governmental Unit knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the State (including, without limitation, the Rural Authority or Commerce) to enforce its rights under this Grant Agreement. This waiver includes any objections the Governmental Unit may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.



17. Force Majeure. If (a) during the term of this Grant the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of the LBC as and when the LBC requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of the LBC; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.
18. Special Provisions and Conditions.
- (a). Non-discrimination. The Governmental Unit agrees not to discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this Grant Agreement.
  - (b). Conflict of Interest. The Governmental Unit shall adopt and keep on file, along with the executed copies of this Grant Agreement, a copy of its policy and any ordinance or resolution it has adopted addressing conflicts of interest that may arise involving the members of the Governmental Unit's governing body and/or any of its employees or officers involved in the Grant, the LBC or the Project. Such policy, ordinance or resolution shall address situations in which any of these individuals may directly or indirectly benefit, other than through receipt of their normal compensation in their capacities as the Governmental Unit's employees, officers or members of its governing body, from the Grant, the LBC or Project, and shall include actions to be taken by the Unit or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. Additionally, the Governmental Unit certifies that, as of the date it executes this Grant Agreement, no such individuals have such a conflict of interest or will directly or indirectly benefit, except in the capacities described above, from the Grant, LBC or Project. Throughout the duration of this Grant Agreement, the LBC and the Project, the Governmental Unit has the duty to promptly inform Commerce of any such conflict of interest or direct or indirect benefit of which it becomes aware.
  - (c). Compliance with Laws. The Governmental Unit shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the Grant Agreement, the LBC or the Project.
  - (d). Non-Assignability. The Governmental Unit shall not assign or transfer any interest in the Agreement without the prior written consent of Commerce; provided, however, that claims for money due to Governmental Unit from Commerce under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

- (e). Personnel. The Governmental Unit represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Agreement. Such employees shall not be employees of Commerce. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.
19. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the Rural Authority or Commerce:   Attn: **Hazel Edmond**  
Program Manager  
North Carolina Department of Commerce  
Rural Economic Development Division  
301 North Wilmington Street  
4346 Mail Service Center  
Raleigh, North Carolina 27699-4346

If to the Governmental Unit:                   Attn: **Mr. Jeff Whitson**  
Chairman  
Yancey County  
110 Town Square Road  
Burnsville, NC 28714

or addressed to such other address or to the attention of such other individual as Commerce or the Governmental Unit shall have specified in a notice delivered pursuant to this subsection.

20. Entire Agreement. This Grant Agreement supersedes all prior agreements between or among the Rural Authority and/or Commerce and the Governmental Unit with regard to the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Commerce and the Governmental Unit.
21. Execution. This Grant Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts.
22. Construction. This Grant Agreement shall be construed and governed by the laws of the State of North Carolina.
23. Severability. Each provision of this Grant Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Grant Agreement, but this Grant Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

24. Acceptance. If the Governmental Unit agrees to the Grant conditions as stated, please return the executed documents specified in Paragraph 1(a). This Grant may be withdrawn if Commerce has not received such documents within thirty (30) days from the date of the cover letter from Commerce to the Governmental accompanying this Grant Agreement and its Exhibits.

IN WITNESSETH WHEREOF, the parties hereto have executed this Grant Agreement as of the date first above written.

**Yancey County**

Signature:



[SEAL]

Printed Name:

Jeff Whitson

Title:

Chairman

Date:

12/20/19

**North Carolina Department of Commerce**

Signature:



[SEAL]

Printed Name:

Kenny Flowers

Title:

Assistant Secretary for Rural Economic Development

Date:

12/9/2019

**EXHIBIT A  
SCOPE OF PROJECT**

Summary: The project will support two components - 1.) The renovation of a vacant 15,477 SF building located at 54 Ferguson Hill Road in Burnsville. 2.) A 5,000 SF expansion of a building located at 150 Altec Drive. Altec Industries, Inc is provider of products and services to the electric utility, telecommunications, tree care, lights and signs, and contractor markets. Products include aerial devices, digger derricks, truck bodies, and related equipment. This is the fourth grant to benefit the company.

**EXHIBIT B  
PAYMENT SCHEDULE**

**Eligible Expenditures:**

**Vacant Building Category:** within the existing building footprint

**Existing Business Building Category:** within the existing building and/or additions

**Rural Health Care Category:** within the existing building, additions and/or new construction

Eligible costs under all funding categories include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, fire alarm/suppression systems, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

Any company in which any project partner has an ownership or management interest in may act as a contractor for the renovation project only if the company holds a valid NC General Contractors license. The relationship must have been disclosed to the Rural Development Division and a copy of the company's license must have been included in the application. Licensed contracting companies owned or operated by any project partner that are used in the renovation project will be required to submit original invoices from the provider for all labor, materials, services and subcontracted work plus proof that those invoices have been paid in full.

**Reimbursement Requirements:**

The Department of Commerce will reimburse 50% of eligible expenditures up to the total grant amount upon receipt of the following:

1. A completed financial request form,
2. Evidence that the 5% local government match has been satisfied (first payment request),
3. Copies of eligible project invoices that support the request amount,
4. Evidence that the invoices submitted for reimbursement have been paid-in-full. Evidence may include copies cleared checks, wire transfer or ACH receipts, and/or credit card receipts. Invoices paid with cash and those not paid in full will not be reimbursed, and
5. Satisfaction of reporting requirements according to Exhibit C below.

Eligible expenditures may not be incurred prior to the effective date or subsequent to the termination date of the grant. Payments are subject to the availability of funds.

**EXHIBIT C**  
**REPORTING SCHEDULE**

Progress reports are due on January 15<sup>th</sup> and July 15<sup>th</sup> for each year that the grant remains open. The final report and job verification documentation are due at the time of project completion or no later than 30 days after the grant end-date, whichever is sooner. The reporting schedule remains in effect for the duration of the grant including time extensions.

**Failure to submit progress reports as required:**

1. Will result in non-payment of payment requests,
2. Can result in the immediate termination of the grant,
3. Can result in the demand for immediate repayment of any funds paid by The Department of Commerce, and
4. Will negatively impact the grantee's eligibility for future Commerce grants.

**EXHIBIT D**  
**JOB VERIFICATION AND CLOSE OUT REQUIREMENTS**

Building Reuse and Rural Health Care loans are eligible for forgiveness once the creation and maintenance of the full-time jobs committed for the project, as well as, all reporting requirements are approved by Commerce. Below are the requirements and procedure for approval.

**Job Verification**

To be considered eligible, a full-time job must be filled with one employee who works at least 35 hours per week and is paid at least minimum wage. Part-time, full-time equivalents, or contract/consulting positions are not eligible.

**Grantees should submit the following as evidence of job creation and maintenance:**

1. **Job Certification Form**—both the grantee and the participating business are required to complete respective sections of this form that attests to the creation of the number of jobs full-time jobs committed to receive the grant. The form must be signed by the authorized representatives of the local government grantee and the participating business.
2. **NCUI 101 Forms**—The grantee should submit copies of each company's *Employer's Quarterly Tax and Wage Report* (NCUI 101 forms) that have been submitted to the North Carolina Employment Security Commission according to the requirements below.
  - NCUI 101 Forms should be submitted to Commerce.
  - The forms must include the appropriate number of quarters to show that the company maintained the required employment level for six-consecutive months.
  - The employment level reported must meet or exceed the baseline number of employees reported at the time of the application plus the number of new, full-time jobs committed for the grant.
  - The jobs created and the baseline must be maintained concurrently during the same six-month period.
  - If the NCUI 101 forms include employees from other locations in North Carolina, the names of the employees working in the grant funded project facility should be highlighted, and a multi-site report should be provided.
  - If the NCUI 101 forms include both full and part-time employees an "f" should be written next to the name of each full-time employee and a "p" should be written next to the name of each part-time employee.
3. **Final Report**—the grantee must submit the Final Report Form that describes the activities and outcomes of the project.
4. **Photos**—the grantee must submit digital photos that show a variety of views of the completed project.

All forms, including reporting and request for payment, can be found on the Commerce website at <http://www.nccommerce.com/rgp>. Email completed forms and reports to [rgpreports@nccommerce.com](mailto:rgpreports@nccommerce.com).



**Yancey County** (the "Governmental Unit") enters into this Loan Agreement and Legally Binding Commitment (the "LBC," including the "Loan," defined below with **The Winter Star Company, Inc** (the "Owner" and, together with the Governmental Unit, the "Parties").

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, the North Carolina Rural Infrastructure Authority (the "Rural Authority") of the State of North Carolina ("State") has awarded a grant (the "Grant") to the Governmental Unit, and the North Carolina Department of Commerce ("Commerce"), an agency of the State, will administer the Grant; and

WHEREAS, the Grant is memorialized in an agreement (the "Grant Agreement") between Commerce and the Governmental Unit, and the Grant Agreement includes Exhibit A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (this LBC, which incorporates by reference the Grant Agreement and its other Exhibits), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality ("Waiver")); and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated into the Grant Agreement by reference; (2) based on the representation in the application that the Owner owns certain real property located at:

54 Ferguson Hill Road  
Burnsville, NC 28714

in **Yancey County**, North Carolina (the "Property"); (3) based on Commerce's Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to the Grant Agreement and this LBC by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the "Project," as summarized in Exhibit A to this Grant Agreement); and

WHEREAS, the Governmental Unit and the Owner are required to enter into this LBC as a condition of the Governmental Unit loaning the Grant funds to the Owner.

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration set out herein, the Parties mutually agree to the following terms and conditions:

1. **Third-Party Beneficiary.** The Parties agree that the State (including, without limitation, Commerce and the Rural Authority) is an intended third-party beneficiary of this LBC (including the Loan) and may, at its option, enforce the terms of this LBC or appear as a party in any litigation concerning the LBC.

2. Loan.

- (a) The Governmental Unit hereby loans to the Owner the sum of **\$500,000.00** (the "Loan"), which consists entirely of State Grant funds, to fund the Project. Exhibit A to the Grant Agreement refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs, as defined in Paragraph 3(a), to complete the Project under this LBC as the "Company," the "Employer" and the "Business" (together and hereinafter, the "Business"). The Owner specifically acknowledges that: it must repay the Loan in accordance with the terms of this LBC if the Business does not create and maintain the new jobs required by Paragraph 3(a) below; and as evidence of its obligation to repay the Loan, the Owner has executed the Promissory Note, Exhibit F to the Grant Agreement, which the Owner represents, acknowledges and agrees has been signed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
- (b). As conditions of receiving the Loan:
- i. The highest elected official of the Governmental Unit and a duly authorized representative of the Owner shall execute two originals of the LBC in its exact form (unless Commerce approves of a change to its terms in writing), and the Governmental Unit shall return one such original to Commerce;
  - ii. Every individual or entity that has any ownership interest in the Property shall execute two originals of the Promissory Note in its exact form, and the Governmental Unit shall return one such original to Commerce; and
  - iii. The Owner and the Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver, Exhibit G to the Grant Agreement, and the Governmental Unit shall forward the original of any such Waiver to Commerce.
- (c). The Owner hereby represents and warrants that all Loan funds shall be utilized exclusively for the purpose of the Project and that it shall not make or approve of any improper expenditures of Loan funds.

3. New Job Creation, Maintenance of New Jobs and Baseline Number of Jobs and Verification.

- (a). New Job Creation and Maintenance of New Jobs and Baseline Number of Jobs. A "New Job" shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) which is with the Business, is located in North Carolina, has a wage at least equal to the minimum wage, is created and maintained by the Business in order to complete the Project and is over and above the **1,948** full-time jobs in North Carolina ("Baseline Number") that the Business reported having at the time of the application for the Project. The Owner agrees that the Business shall be required to create and maintain in existence for six (6) consecutive months **50** New Jobs prior to the Termination Date, unless this term is extended pursuant to Paragraph 5. Separate and apart from these New Jobs, the Owner agrees that the Business shall be required to maintain in existence its Baseline Number of jobs for as long as it takes the Business to create and maintain its required number of New Jobs.

- (b). Verification. When the New Jobs required by Paragraph 3(a) have been created and maintained for six (6) consecutive months, the Owner shall notify the Governmental Unit so that it and/or Commerce can verify their creation and maintenance, as well as the maintenance of the Baseline Number of jobs and the satisfaction of all other conditions and terms of this LBC and the Project. The Owner shall cause any Business to provide to the Governmental Unit and Commerce, or their respective designees, full and complete access to all records of the Business necessary to verify the number and types of jobs created and maintained, the wages paid to employees and all other conditions and terms of this LBC and the Project. Failure of any Business to provide such access upon request shall constitute a material default by the Owner under the terms of this LBC and, in the sole discretion of the Governmental Unit and/or Commerce, may subject the Owner to repayment in an amount calculated under Paragraph 13 below.
4. Changes in the Project or Other Conditions.
- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC, the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce and the Governmental Unit in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.
- (b). Additionally, the Owner shall immediately notify the Governmental Unit of any change in conditions or local law, or any other event, which may significantly affect the ability of it or any Business to perform the LBC or the Project. In their sole discretion, the Governmental Unit or Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.
5. Term of LBC. The effective period of this LBC shall commence **8/22/2019** ("Effective Date") and shall terminate **8/22/2021** unless terminated on an earlier date under the terms of this LBC (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.
6. Independent Status of the Governmental Unit.
- (a). The State (including, without limitation, the Rural Authority and Commerce) and the Governmental Unit are independent entities from one another and from the Owner and any third party (including, without limitation, any Business). The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between the State and the Governmental Unit or between or among either of them and the Owner or any third party (including, without limitation, any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make any employees, agents or members of the Owner or any third party (including, without limitation, any Business) into employees, agents, members or officials of the Governmental Unit or the State or to

make employees, agents, members or officials of the Governmental Unit into employees, agents, members or officials of the State. Neither the Owner nor any third party (including, without limitation, any Business) shall have the ability to bind the Governmental Unit or the State to any agreement for payment of goods or services or represent to any person that they have such ability. Nor shall the Governmental Unit have the ability to bind the State to any agreement for payment of goods or services or represent to any person that it has such ability.

- (b). The Owner and any third party (including, without limitation, any Business) shall be responsible for payment of all their expenses, including rent, office expenses and all forms of compensation to their employees. The Owner and any third parties (including, without limitation, any Business) shall provide worker's compensation insurance to the extent required for their operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with their operations, for themselves and their employees who are performing work pursuant to this LBC or the Project. All expenses incurred by the Owner or any third party (including, without limitation, any Business) are their sole responsibilities, and neither the Governmental Unit nor the State (including, without limitation, Commerce and the Rural Authority) shall be liable for the payment of any obligations incurred in the performance of the Project.

7. Project Records.

- (a). The Owner shall maintain and cause any Business to maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this LBC separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- (b). The Owner shall retain and cause any Business to retain all financial records, supporting documents and all other pertinent records related to this LBC, the Loan and the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

8. Monitoring, Reports and Auditing. The Owner agrees to generate and to cause any Business to generate such reports regarding the LBC or the Project as may be requested by the Governmental Unit or the State (including, without limitation, the Rural Authority or Commerce) in such form as they may request, including after the Termination Date. The Owner further grants and shall cause any Business to grant the Governmental Unit or the State (including any of its agencies, commissions or departments such as Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor and examine all of the books, papers, records and other documents relating to the LBC or the Project. In addition, the Owner agrees to comply and to cause any Business to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other

financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

9. Termination: Availability of Funds.
- (a). If the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Owner agrees that the Governmental Unit or Commerce has the right to terminate the LBC by giving the Owner written notice specifying the Termination Date, which shall be determined by the Governmental Unit or Commerce in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
  - (b). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under its Grant Agreement with Commerce, the Owner agrees that Commerce has the right to terminate its Grant Agreement with the Governmental Unit and/or terminate this LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
  - (c). The obligations of the Rural Authority and/or Commerce to pay any Grant funds to the Governmental Unit and for the Governmental Unit to pay any Loan amounts to the Owner under this LBC are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant and therefore the Loan become unavailable, the Owner agrees that either Commerce or the Governmental Unit has the right to terminate this LBC by giving written notice specifying the Termination Date, which either the Governmental Unit or Commerce may determine in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed.
10. Liabilities and Loss. The Owner hereby agrees to release, indemnify and hold harmless the Governmental Unit and the State (including the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Indemnified Parties"), from any claims of third parties (including, without limitation, any Business) arising out of any act or omission of the Owner or any third party (including, without limitation, any Business) in connection with the performance of this LBC or the Project, and for all losses arising from implementation

of this LBC or the Project. Without limiting the foregoing, the Owner hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether or not arising out of acts, omissions or negligence of the Owner or of any third party (including, without limitation, any Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

11. Owner Representations and Warranties. The Owner hereby represents and warrants that:
- (a). The Owner and every Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.
  - (b). This LBC has been entered into and executed on behalf of the Owner by an individual with full actual and apparent authority to bind the Owner to the terms hereto, and the execution and delivery of this LBC have been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws or other applicable organizational documents of the Owner, nor are they in contravention of the provisions of any indenture, agreement or undertaking to which the Owner is a party or by which it is bound.
  - (c). The Promissory Note has been executed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
  - (d). There is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, or, to the Owner's knowledge, threatened against or affecting the Owner, that could or might adversely affect the Project, the creation of the New Jobs or any of the transactions contemplated by this LBC, or the validity or enforceability of this LBC or the Owner's ability to discharge its obligations under this LBC.
  - (e). Upon the Owner's reasonable inquiry of any Business, there is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, threatened against or affecting any Business that could or might adversely affect the Project, the creation of the Jobs or any of the transactions contemplated by this LBC or the validity or enforceability of this LBC or the ability of any Business to create the Jobs specified herein.
  - (f). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this LBC by the Owner or the performance of any of its obligations hereunder, or else all such requisite governmental consents or approvals have been obtained. The Owner shall provide the Governmental Unit or Commerce with evidence of the existence of any such necessary consents or



- approvals at the time of the execution of this LBC.
- (g). The Owner is solvent and has inquired of and received reasonable evidence from any Business of the solvency of that Business.
  - (h). A cash match grant, loan or other funding ("Cash Match") equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. The Owner hereby represents and warrants that all Cash Match funds shall be utilized exclusively for the purpose of the Project and that it shall not make or approve of improper expenditures of Cash Match funds. The Owner shall expend all Cash Match funds prior to or simultaneously with and at the same rate as its expenditure of Loan funds.
12. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.
- (a). The Owner shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in this LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, any merger, consolidation or sale without such an undertaking shall constitute a material default under this LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under this LBC.
  - (b). Other than as provided for in Paragraph 12(a), if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, the Owner shall give the Governmental Unit immediate notice of the event, shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
  - (c). If the Owner fails to provide the Governmental Unit notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this LBC. If there is such a cessation or such a proceeding, the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner. Upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
  - d). Notwithstanding the foregoing and wherever referred to in this LBC, "ceases to do business" shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) season shutdowns of operations as long as such cessation does not exceed a total of four (4) weeks in any calendar year (excluding time

attributable to an event of force majeure as described below) and (3) under the circumstances for the period of time described in Paragraph 22 below.

13. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 13 are in addition to those repayment requirements and other remedies set forth elsewhere in this LBC, including the requirements to repay unspent Loan funds. No remedy conferred or reserved by or to the State or the Governmental Unit is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this LBC, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). The Owner acknowledges that the Grant by the Rural Authority and the Loan by the Governmental Unit are predicated upon the creation and maintenance of the New Jobs and maintenance of the Baseline Number of jobs required by Paragraph 3(a) and that failure to create and/or maintain them will constitute a material default of this LBC.
  - i. If the Business fails to create and maintain such New Jobs, then the Owner shall repay to the Governmental Unit or Commerce, as directed, an amount equal to the product of (i) **\$10,000** (the amount of Loan funds divided by the number of New Jobs required to be created in Paragraph 3(a) and (ii) the number of New Jobs required to be created in Paragraph 3(a), minus the number of New Jobs actually created, above the Baseline Number reported, that have been in existence for six (6) consecutive months.
  - ii. Additionally, in the event that the Business fails to maintain its Baseline Number of jobs as required under Paragraph 3(a), the Business shall lose credit for any qualifying New Jobs under this LBC by the same number of jobs that the Baseline Number is short. For example, if the Baseline Number of jobs falls short by three (3) jobs as of the date the Business has created and maintained all required New Jobs, the number of New Jobs deemed created and maintained shall be reduced by three (3). The amount the Business must repay shall then be calculated in accordance with Paragraph 13(b)i.
  - iii. Either Commerce or the Governmental Unit shall notify the Owner in writing of the amount to be repaid and direct the Owner whether to repay such amount to the Governmental Unit for return to Commerce or repay the amount directly to Commerce. All such amounts shall be due immediately upon demand by the Governmental Unit or Commerce. If not paid within thirty (30) days following demand, the unpaid amount due hereunder and under the Promissory Note shall bear interest at the rate of 10% per annum after demand until paid. Upon default in such payment, the Governmental Unit or Commerce may employ an attorney to enforce their respective rights and remedies, and the Owner hereby agrees to pay the legal costs and reasonable attorneys' fees of the Governmental Unit and Commerce plus all other reasonable expenses incurred by such party in exercising any of its rights and remedies upon such defaults.

- (c). If there is a breach of any of the requirements, covenants or agreements in this LBC (including, without limitation, a failure to repay the amount required under Paragraph 13(b) within the time required), or if there are any representations or warranties which are untrue as to a material fact in this LBC or in relation to the LBC or the Project (including the performance thereof), the Owner agrees that the Governmental Unit or Commerce may require repayment from the Owner of an amount of Loan funds to be determined in their sole discretion but not to exceed the amount of Loan funds the Owner has already received under this LBC. Such requirements, covenants or agreements include but are not limited to Paragraphs 2, 3, 4, 9, 11 and 12 of this LBC.
14. No Waiver by Governmental Unit or the State. Failure of the Governmental Unit or the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this LBC shall in no manner affect the rights of the Governmental Unit or the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Governmental Unit or the State of any condition or the breach of any term, provision or representation contained in this LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
15. Waiver of Objections to Timeliness of Legal Action. The Owner knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the Governmental Unit or the State (including Commerce) to enforce their rights under this LBC. This waiver includes any objections the Owner may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.
16. Special Provisions and Conditions.
- (a). Nondiscrimination. The Owner agrees that it will not, and will ensure that the Business will not, discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this LBC or the Project.
  - (b). Compliance with Laws. The Owner shall at all times, and shall cause any Business at all times to, observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the LBC or the Project.
  - (c). Non-Assignability. The Owner shall not assign or transfer any interest in the LBC without the prior written consent of the Governmental Unit and Commerce; provided however, that claims for money due to the Owner from the Governmental Unit under this LBC may be assigned to any commercial bank or other financial institution without such approval.
  - (d). Personnel. The Owner represents that it and any Business have or will secure at their own expense all personnel required to monitor, carry out and perform the scope of services of this LBC and the Project. Such employees shall not be employees of the State (including, without limitation, the Rural Authority or Commerce) or the Governmental Unit. Such personnel shall be fully qualified and shall be authorized

Rural Economic Development Loan Agreement and  
Legally Binding Commitment, Private Owner  
**BUILDING REUSE PROGRAM**

**EXHIBIT E**

2020-008-3201-2587

under state and local law to perform such services.

17. Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

If to the Governmental Unit:

Attn: Lynn Austin  
Yancey County Manager  
110 Town Square  
Burnsville, NC 28714

To the Owner:

Attn: Jamie McMahon  
Executive Director  
PO Box 246  
Burnsville, NC 28714

or addressed to such other address or to the attention of such other individual as either party above shall specify in a notice pursuant to this subsection.

18. Entire Agreement. This LBC supersedes all prior agreements between the Governmental Unit and the Owner with regard to the Loan and the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Parties.
19. Execution. This LBC may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same LBC which shall be sufficiently evidenced by one of such original counterparts.
20. Construction. This LBC shall be construed and governed by the laws of the State of North Carolina.
21. Severability. Each provision of this LBC is intended to be severable and, if any provision of this LBC is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this LBC, but this LBC shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.



22. Force Majeure. If (a) during the Grant Term the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of this Agreement as and when this Agreement requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of this Agreement; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.

IN WITNESS WHEREOF, the parties hereto have executed this LBC as of the date first above written.

Governmental Unit Name: Yancey County

Signature: Jeff Whitson [SEAL]

Printed Name: Jeff Whitson

Title: Chairman

Owner Name: The Winter Star Company, Inc.

Signature: James M. Ray [SEAL]

Printed Name: JAMES M. RAY

Title: Chairman

Promissory Note, Private Owner  
**BUILDING REUSE PROGRAM**

**EXHIBIT F**

**2020-008-3201-2587**

For VALUE RECEIVED and subject to the terms of and secured by the Rural Economic Development Loan Agreement and Legally Binding Commitment – Private-Owner Building Reuse Program, Reference Number **2020-008-3201-2587** (“LBC,” which is incorporated by reference herein), the undersigned borrower[s] (the “Owner”) jointly and severally promise[s] to pay to lender **Yancey County** or its assigns (together, the “Governmental Unit”) or to the intended third-party beneficiary of this Promissory Note, the North Carolina Department of Commerce (“Commerce”), upon demand and as directed by either the Governmental Unit or Commerce, an amount of principal loan (“Loan”) funds under the LBC up to and including **\$500,000.00** Dollars but which amount shall not exceed the amount of Loan funds the Owner has actually received under the LBC, plus interest and attorney’s fees as addressed below. Unless otherwise specified herein, capitalized terms in this Promissory Note shall have the same meaning as those set forth in the LBC.

The Owner acknowledges and represents that: (i) the undersigned is or are the only person(s), entity or entities who or that have any ownership interests in the certain real property located at:

54 Ferguson Hill Road  
Burnsville, NC 28714

in **Yancey County**, North Carolina (the “Property”); and (ii) the undersigned shall be jointly and severally liable for any and all debts secured by this Promissory Note.

The Owner further acknowledges that: (i) in order for the Owner to receive the Loan, the LBC requires the Owner to complete a “Project”; (ii) in order for the Owner to receive the Loan, what the LBC identifies as the “Business” must maintain certain jobs and create and maintain certain other jobs in working with the Owner to complete the Project; (iii) the Loan from the Governmental Unit to the Owner under the LBC consists entirely of a grant from the State of North Carolina to the Governmental Unit, subject to certain clawback provisions; (iv) Commerce is an intended third-party beneficiary to the LBC and to this Promissory Note; and (v) the LBC specifies those circumstances in which the Governmental Unit or Commerce can terminate the LBC and require the Owner to repay an amount of Loan funds according to a formula or else in an amount to be determined in the sole discretion of the Governmental Unit or Commerce but which amount shall not exceed the amount of Loan funds the Owner has actually received under the LBC.

Upon default, the Governmental Unit and/or Commerce may employ attorneys to enforce their rights and remedies under this Promissory Note and the LBC, and the Owner agrees to pay their reasonable attorneys’ fees, plus all other reasonable expenses they incur in exercising their rights and remedies upon default. The rights and remedies of the Governmental Unit and Commerce, as described in this Promissory Note and the LBC, shall be cumulative and may be pursued singly, successively or together against the Owner (including each of the undersigned), the Property, or any other funds, property or security held by the Owner for payment or security, in the sole discretion of the Governmental Unit and Commerce. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.



The Owner hereby waives protest, presentment, notice of dishonor and notice of acceleration and maturity and agrees to remain bound for the payment of principal, interest and all other sums due under this Promissory Note and the LBC, notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Promissory Note, or by way of any extension or extensions of time for the payment of principal and interest; and the Owner waives all and every kind of notice of such change or changes and agrees that the same may be made without notice of or consent to any of them.

This Promissory Note may not be amended, changed or altered except in writing executed by the Owner, the Governmental Unit and Commerce.

If not repaid within 30 days following demand hereunder, the Loan funds demanded by the Governmental Unit or Commerce under this Promissory Note shall bear interest at the rate of 10% per annum after demand until repaid. If either the Governmental Unit or Commerce initially demands Loan repayment from the Owner ("First Demand") in an amount less than the Loan funds the Owner has actually received under the LBC but, failing to receive repayment and, in its discretion under the LBC, increases the Loan repayment demand ("Second Demand") to the full amount the Owner has received under the LBC, then such interest on the difference between the First and Second Demands shall begin to accrue as of the date of the Second Demand.

For example, if under the terms of the LBC, a Business engages in an improper expenditure of Loan funds, the Governmental Unit has the discretion to require in a First Demand the partial repayment of Loan funds received by the Owner. Interest will begin to accrue at 10% per annum on whatever portion of the sum is not repaid as of the 31<sup>st</sup> day after the First Demand. Further, if the Owner fails to repay the First Demand in full, the Governmental Unit retains the discretion under the LBC to terminate the LBC and issue a Second Demand for the full repayment by the Owner of all Loan funds. Interest will continue accruing at 10% per annum on the original principal amount still unpaid from the First Demand and, following the expiration of 30 days from the Second Demand, interest will begin to accrue at 10% per annum on the additional unpaid principal Loan amount in the Second Demand.

Payment shall be made in lawful money of the United States of America via United States Mail First Class, Federal Express or UPS to the attention of the person at the address or in person at the address of the Governmental Unit or Commerce as directed in writing.

This Note shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

Promissory Note, Private Owner  
BUILDING REUSE PROGRAM

EXHIBIT F

2020-008-3201-2587

IN WITNESS WHEREOF, the undersigned has (have) caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

EVERY SIGNATORY BELOW EXPRESSLY REPRESENTS THAT ALL INDIVIDUALS OR ENTITIES WITH ANY OWNERSHIP INTERESTS IN THE PROPERTY HAVE EXECUTED THIS PROMISSORY NOTE.

Dated as of: \_\_\_\_\_ 20 \_\_\_\_\_

If by Individual: \_\_\_\_\_

Signature: \_\_\_\_\_ [SEAL]

Printed Name: \_\_\_\_\_

Dated as of: 20 December, 20 19

If by Entity: The Winter Star Company

Signature: James M Ray [SEAL]

Printed Name: James M Ray

Limited Waiver of Confidentiality  
Unemployment Tax and Wage Records  
BUILDING REUSE PROGRAM

EXHIBIT G


2020-008-3201-2587

Name of Taxpayer Altec Industries Inc.  
Address: 210 Inverness Ctr Drive  
City: Birmingham State: AL Zip: 35242 Phone: 205-408-8624  
NC Unemployment Insurance Acct #: 94-48-3955 Fed Tax ID #: 63-0362926

I hereby waive any right to confidentiality, as found in N.C.G.S. 96-4 or otherwise, for the limited purpose of authorizing disclosure of certain information contained in the quarterly unemployment insurance tax records of the above-named taxpayer (hereinafter, "Company") filed with the Division of Employment Security ("DES") of the North Carolina Department of Commerce to Yancey County ("Governmental Unit") and to the employees of the Rural Economic Division of the North Carolina Department of Commerce ("Rural Division") and members of the North Carolina Rural Infrastructure Authority ("Rural Authority") for the limited purpose of evaluating the issuance of and, in the event of such issuance, administering and ensuring compliance with, a grant and loan pursuant to N.C.G.S. 143B-472.127 and .128.

I recognize that DES is authorized to provide this information to the public officials of the Governmental Unit, the Rural Division and the Rural Authority in the performance of their public duties and that the verification of employment information for the purpose of administering the grant and loan at issue is within the scope of the public duties of the Governmental Unit, the Rural Division and the Rural Authority. I hereby authorize DES to disclose information contained in the Company's quarterly unemployment insurance tax records (the NCUI-101 or successor form) to the Governmental Unit, the Rural Division and/or the Authority for these purposes.

I recognize that unemployment insurance tax information provided in the aggregate to DES and disclosed to the Governmental Unit, the Rural Division and/or the Authority, and the Company's aggregated tax and wage information provided to or otherwise in possession of the Governmental Unit, the Rural Division and/or the Authority, may be treated as public information. This waiver is not intended to release the Governmental Unit, the Rural Division and/or the Authority from any obligation they may have under North Carolina law to maintain the confidentiality of any and all information which could reveal or permit someone to ascertain the identity of any individual employee or that employee's line item unemployment insurance tax or other tax or wage information.

  
\_\_\_\_\_  
Signature, Chief Financial Officer or Other Authorized Company Official

Jerry W. Moore  
Print Name

Treasurer and Controller  
Title



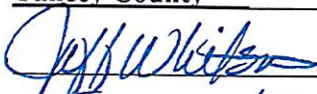
The Department of Commerce strongly encourages, but does not require, the Governmental Unit secure the funds loaned to the property owner, The Winter Star Company, Inc., with a Deed of Trust on the property.

Please check the appropriate box below indicating the intention of the Governmental Unit:

☐ The Governmental Unit will secure the funds with a Deed of Trust listing Yancey County as the beneficiary in the amount of \$500,000.00.

☒ Yancey County ("Governmental Unit") has elected NOT to secure with a deed of trust on the subject property the \$500,000.00 in grant funds awarded by the North Carolina Department of Commerce ("Commerce") for a building reuse grant. Governmental Unit acknowledges and agrees that it is liable to the State for any grant funds that must be repaid under the Grant Agreement or Legally Binding Commitment, including (without limitation), any required repayments due to the property owner's failure to create and maintain jobs, which could include the full amount of the grant. Governmental Unit acknowledges that its liability to Commerce arises whether or not it is able to collect any repayment from the property owner under the Legally Binding Commitment, but still elects not to obtain a deed of trust on the subject property.

Please fill in the box below:

Governmental Unit Name:	<u>Yancey County</u>
By (Signature):	<u></u>
Printed Name:	<u>Jeff Whitson</u>
Title:	<u>Chairman</u>
Date:	<u>20 December, 2019</u>